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Side Pocket [Not a Juridical Entity]*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 15
FAIRFIELD SENTRY LIMITED, et al.,	Case No. 10-13164 (SMB)
Debtors in Foreign Proceedings.	Jointly Administered
FAIRFIELD SENTRY LIMITED, et al.,	
Plaintiffs,	Adv. Pro. No. 10-03496 (SMB)
v.	Administratively Consolidated
THEODOOR GGC AMSTERDAM et al.,	
Defendants.	
FAIRFIELD SENTRY LIMITED et al.,	
Plaintiffs,	Adv. Proc. No. 10-3635 (SMB)
v.	Adv. Proc. No. 10-3636 (SMB)
ABN AMRO SCHWEIZ et al.,	
Defendants.	

**UNIFORTUNE CONSERVATIVE SIDE POCKET'S
SUPPLEMENTAL REPLY IN OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO AMEND
AND IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

Unifortune Conservative Side Pocket ("UCSP"), by and through its undersigned attorneys, fully joins the Consolidated Reply Brief (ECF No. 305 in Adv. Proc. No. 10-3635; ECF

No. 335 in Adv. Proc. No. 10-3636) and pursuant to sections I.D and I.L of the Court's Supplemental Case Management Order,¹ submits this Individual Reply Brief.

In their Individual Opposition Brief (ECF No. 292 in Adv. Proc. No. 10-3635; ECF No. 321 in Adv. Proc. No. 10-3636), the Liquidators tacitly concede that "Allianzbank SPA/Unifortune Conservative Side Pocket" is an improperly named entity, and do not allege that UCSP is a juridical entity having the capacity to be sued. Instead, the Liquidators (1) highlight that UCSP did not dispute that it had received Redemption Payments, and (2) "reserve their right to revise the caption and its [sic] complaint." [Opp. at 2.]

Their arguments are misplaced. *First*, a motion to dismiss takes the facts alleged in a complaint as true, so UCSP's failure to deny that it received Redemption Payments is irrelevant at this stage of the proceeding. Moreover, the Complaint does not even allege that UCSP or the nonexistent "Allianzbank SPA/Unifortune Conservative Side Pocket" received Redemption Payments and if so, how much. It says only, "some or all of the Redemption Payments made to the Citco Subscriber may have been paid to an account holder or holders associated with Allianzbank SPA/Unifortune Conservative Side Pocket." [Complaint ¶ 33.] Finally, UCSP cannot dispute facts relating to receipt of Redemption Payments where the Complaint does not specify which entity the Liquidators believe received the Redemption Payments and which entity they intended to sue.

Second, the Liquidators' hypothetical ability to "revise" the Complaint to name a properly identified defendant or another defendant is not before the Court. The Liquidators sued the nonexistent entity "Allianzbank SPA/Unifortune Conservative Side Pocket." Their proposed

¹ *Fairfield Sentry Ltd. v. Theodoor GGG Amsterdam*, Adv. Proc. No. 10-03496(SMB) (Bankr. S.D.N.Y. Oct. 18, 2016), ECF No. 918 (as amended by the Third Supplemental Case Management Order, Adv. Proc. No. 10-03496(SMB) (Bankr. S.D.N.Y. Mar. 23, 2017), ECF No. 1326).

Fourth Amended Complaint, filed over 6 years and three attempts after the original complaint, still does not name an existing entity that is capable of being sued. Whether the Liquidators may file a Fifth Amended Complaint to name a property identified defendant or to name a different defendant does not cure the Third Amended Complaint's defects or justify allowing the Liquidators to file the Proposed Fourth Amended Complaint. Dismissal is warranted.

This Individual Reply Brief is not and shall not be construed as a waiver of any of Unifortune Conservative Side Pocket's or any affiliated or related entities' jurisdictional, substantive, or procedural rights, remedies, and defenses in connection with this adversary proceeding.

Dated: New York, New York
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/s/ Richard Levin

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